

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1427 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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ALJIBHAI UKABHAI PARMAR

Versus

MOHANLAL NATHUBHAI PARMAR

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Appearance:

MR KV SHELAT for Petitioner

MR DAXESH T DAVE for Respondent No. 1, 2, 3, 4, 5

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/10/1999

ORAL JUDGEMENT

Rule. Ld. advocate Mr. D.T. Dave waives service of rule on behalf of respondents. In view of the peculiar facts and circumstances of the case and with the consent of the advocates appearing for the parties, this matter is taken up for final hearing today.

2. I have heard Ld. advocates for the parties. I am of the opinion that it would be in the fitness of things if the following order is passed which would meet the ends of justice.

3. As stated by Mr. Shelat, Ld. advocate for the petitioner, it appears that the property in question is under the Court Receivership from 1980 till date, and petitioner has paid rent from 1980 to 1999 to the Court Receiver, to which documents are produced on record of the present petition at Annexure Page No. 4 to 24. According to the petitioner the decree of eviction passed in H.R.P. No. 1355 of 1982 was an act of fraud on Court which calls for setting aside of the said decree in any proceedings, including collateral proceedings as held in AIR 1984 SC, pg. 853 and 1996 (5) SCC pg. 550. Mr. Shelat has also brought to my notice that the decree in question was an ex-parte decree which came to the knowledge of the tenant only in 1996 when the possession of part of the suit premises was taken in execution of such decree and the tenant has rushed to the executing court challenging the decree as having been actuated by fraud and hence nullity, contending inter alia that when the property of the landlord is under receivership since 1980 the suit filed by the plaintiff in 1982 itself was the abuse of the process of Court. The executing Court refused to go behind the decree, which lead to filing of appeal before the Appellate Bench of Small Causes Court at Ahmedabad by tenant and in appeal he prayed for bringing the necessary documents in custody of the Court Receiver on the record of the appeal by way of filing Application Exhibit-18. Since said application is dismissed present Revision Application is filed before this Court.

4. Ld. advocate Mr. Shelat also states that the petitioner under legal advise has filed application under Order-9, Section 151 of the Civil Procedure Code for setting aside the impugned decree along with application for condonation of delay, stating therein special circumstances.

5. In view of the aforesaid state of affairs this Revision Application is allowed and accordingly the impugned order is quashed and set aside. The application Exhibit-18 of the petitioner is also allowed. Consequent upon this, it is hereby ordered that the Court Receiver appointed by the City Civil Court in Civil Suit No. 376 of 1975 in relation to property of the landlord is directed to produce relevant record in Appeal From Order

No. 5 of 1997 pending before the Appellate Bench of Small Causes Court, Ahmedabad. Rule is made absolute to the aforesaid extent.

6. It is also clarified that the application which has been submitted by the tenant before the Small Causes Court for setting aside ex-parte decree and which is pending before the Id. Judge of the Small Causes Court for condonation of the delay, in view of the special facts & circumstances of the case shall be decided as expeditiously as possible, giving ample opportunity to the parties; keeping in mind the pronouncement made by Hon'ble Apex Court in 1987 SC pg. 1353 , 1996 (5) SCC pg. 550 and 1994 SC pg. 853. This exercise be done preferably within three months from the date of receipt of writ of present orders.

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